

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

SDMS Document ID



1006709

Civil Action No. 99-MK-1386 (OES)

**THE UNITED STATES OF AMERICA, and
THE STATE OF COLORADO,**

Plaintiffs,

v.

**RICO DEVELOPMENT CORPORATION,
JANICE GRAHAM, INDEPENDENT EXECUTOR
OF THE ESTATE OF WAYNE WEBSTER, and
GARY M. SELL, PERSONAL REPRESENTATIVE
OF THE ESTATE OF VIRGINIA SELL,**

Defendants.

**CONSENT DECREE BETWEEN PLAINTIFFS AND GARY M. SELL,
PERSONAL REPRESENTATIVE OF THE ESTATE OF VIRGINIA SELL**

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of Colorado, by and through the Attorney General of the State of Colorado on behalf of the Colorado Department of Public Health and the Environment ("CDPHE") filed a complaint in this matter pursuant to Sections 309 (b) and (d) of the Federal Water Pollution Control Act ("Clean Water Act"), 33 U.S.C. § 1319 (b) and (d), and Sections 25-8-607 and 608 Colorado Revised Statutes ("CRS") (1998) of the Colorado Water Quality Control Act ("CWQCA") seeking injunctive relief and the imposition of civil penalties against the Rico Development Corporation, Wayne Webster and Virginia Sell, for the unlawful discharge of pollutants and the failure to monitor and report the discharge of pollutants as required by the Clean Water Act and the CWQCA, and Colorado Discharge Permit System Regulation No. 61.8. The violations alleged occurred at the Rico Argentine Mine Site, located near the Town of Rico, in Dolores County, Colorado.

B. The United States and the State also seek relief pursuant to Section 7-114-108 of the CRS to recover assets of the Rico Development Corporation that were allegedly distributed to the shareholders (i.e., Wayne Webster and Virginia Sell) when the corporation was in liquidation.

C. The United States also seeks relief pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), for reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Site.

D. Mrs. Virginia Sell and Mr. Wayne Webster both died during the course of this litigation. Pursuant to motions filed by Plaintiffs and by orders of the Court, Gary M. Sell, Personal Representative of the Estate of Virginia Sell, and Janice Graham, Independent Executor of the Estate of Wayne Webster, were substituted as Defendants.

E. By entering into this Consent Decree, Defendant Gary M. Sell, Personal Representative of the Estate of Virginia Sell ("Settling Defendant"), does not admit any liability arising out of the transactions or occurrences alleged in the complaint.

F. The Parties agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Consent Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of the federal claims pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b), Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331, 1345 and 1355. This Court has supplemental jurisdiction over the corresponding State claims pursuant to 28 U.S.C. § 1367. This Court also has personal jurisdiction over Settling Defendant. Settling Defendant consents to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, the State, and upon Settling Defendant and any subsequent personal representative of the Estate of Virginia Sell.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in the Clean Water Act or CERCLA or in regulations promulgated under the Clean Water Act or CERCLA shall have the meaning assigned to them in these statutes or in such regulations. Whenever terms listed below are used in this Consent Decree, the following definitions shall apply:

a. "CDPHE" shall mean the Colorado Department of Public Health and Environment and any successor departments, agencies or instrumentalities of the State of Colorado.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Clean Water Act" shall mean the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.*

d. "Consent Decree" or "Decree" shall mean this Consent Decree.

e. "CWQCA" shall mean the Colorado Water Quality Control Act, Section 25-8-101, *et seq.*, Colorado Revised Statutes.

f. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

g. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

h. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

i. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

j. "Heirs" shall mean David L. Sell, Gary M. Sell and Terry L. Morgan.

k. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

l. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

m. "Parties" shall mean the United States, the State and the Settling Defendant.

n. "Plaintiffs" shall mean the United States and the State.

- o. "Rico Argentine Special Account" shall mean the special account established at the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).
- p. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.
- q. "Settling Defendant" shall mean Gary M. Sell, personal representative of the Estate of Virginia Sell.
- r. "Site" shall mean the complex of tunnels and other facilities at the Rico Argentine Mine including, but not limited to, the St. Louis and Blaine Tunnels and any associated settling ponds and related facilities, located outside the Town of Rico, Dolores County, Colorado and including continuing, intermittent or new discharges from such areas, provided that Settling Defendant or the Heirs do nothing to initiate, increase or exacerbate the discharges.
- s. "State" shall mean the State of Colorado, including its departments, agencies and instrumentalities.
- t. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.
- u. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the objective of the Parties is for Settling Defendant to make a cash payment to address the Estate of Virginia Sell's liability for the Site as provided in the Covenant Not to Sue by Plaintiffs in Section VIII (Covenants Not to Sue by Plaintiffs) and subject to the Reservation of Rights by the United States and the State in Section IX (Reservation of Rights), and to resolve the other claims of Plaintiffs against Settling Defendant as provided in this Decree.

VI. PAYMENT

5. Within 30 days of entry of this Consent Decree by the Court, Settling Defendant shall pay to EPA, One Hundred Ten Thousand Dollars (\$110,000). Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 1998V00866, the EPA Region and Site Spill ID Number 08 BU, and DOJ Case Number 90-5-1-1-06498. Payment shall be made in accordance with instructions provided to the Settling Defendant by the Financial Litigation Unit of the United States Attorney's Office for the District of Colorado following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day.

6. At the time of payment, Settling Defendant shall send notice that payment has been made to the persons designated by the United States and the State in accordance with Section XIV (Notices and Submissions) and to:

Mark Zimmer
United States Environmental Protection Agency, Region 8
Office of Technical and Management Services
Financial Management Program
999 18th Street, Suite 300
Denver, CO 80202-2466

7. The total amount to be paid by Settling Defendant pursuant to Paragraph 5 shall be deposited by EPA in the Rico-Argentine Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

8. Upon Settling Defendant's payment of the above amounts, Gary M. Sell, Personal Representative of the Estate of Virginia Sell is ordered to close the Estate and to liquidate and distribute the assets in accordance with the Arizona Probate Code, Arizona Revised Statutes, Title 14-1102, *et seq.*

VII. FAILURE TO COMPLY WITH CONSENT DECREE

9. **Interest on Late Payments.** If Settling Defendant fails to make any payment under Paragraph 5 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment. Settling Defendant shall make all payments required by this Paragraph in the manner described in Paragraph 10 except that the payment shall be identified as "Interest."

10. **Stipulated Penalty.**

a. In addition to any Interest payment required pursuant to Paragraph 9, if any amount due under Paragraph 5 is not paid by the required due date, Settling

Defendant shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, the sum of \$100.00 per day to the United States for each day that payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number 08 BU, and DOJ Case Number 90-5-1-1-06498, and shall be sent to:

If payment is sent by regular mail:

Mellon Bank
Attn: Superfund Accounting
Lockbox 360859
Pittsburgh, PA 15251-6859

If payment is sent by Federal Express, Airborne, or similar carrier:

U.S. EPA, 360859
Mellon Client Service Center Rm 670
500 Ross Street
Pittsburgh, PA 15262-0001

c. At the time of each payment, Settling Defendant shall send notice that payment has been made to the United States and the State in accordance with Section XIV (Notices and Submissions) and to:

Mark Zimmer
United States Environmental Protection Agency, Region 8
Office of Technical and Management Services
Financial Management Program

999 18th Street, Suite 300
Denver, CO 80202-2466

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendant of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment.

11. If the United States or the State brings an action to enforce this Consent Decree, Settling Defendant shall reimburse the United States and the State for all costs of such action including, but not limited to, costs of attorney time.

12. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiffs by virtue of Settling Defendant's failure to comply with the requirements of this Consent Decree.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendant from payment as required by Section VI (Payment) or from any other requirements of this Consent Decree.

VIII. COVENANT NOT TO SUE BY PLAINTIFFS

14. Covenant Not to Sue by United States. In exchange for the payment to be made pursuant to Section VI (Payment) and any amount due under Section VII (Failure to Comply With Consent Decree), and except as specifically provided in Section IX (Reservation of Rights), the United States covenants not to sue or to take administrative action against Settling Defendant

or the Heirs, but only to the extent that the liability of the Heirs arises solely due to the fact that they have been named as heirs in the last will and testament of Virginia Sell or have otherwise made or received distributions of assets from the estate of Virginia Sell, pursuant to the Clean Water Act for those violations alleged in the Plaintiffs' complaint and pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site or to seek recovery of assets distributed from the Rico Development Corporation to Virginia Sell. With respect to present and future liability, this covenant not to sue shall take effect upon receipt by EPA of all payments required by Section VI (Payment) and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendant of his obligations under this Consent Decree. This covenant not to sue extends only to the Settling Defendant and the Heirs as specified herein, and does not extend to any other person.

15. Covenant Not to Sue by the State. In exchange for the payment to be made pursuant to Section VI (Payment), and any amount due under Section VII (Failure to Comply With Consent Decree), the State covenants not to sue or take administrative action against the Settling Defendant or the heirs of Virginia Sell, including but not limited to David L. Sell, Gary M. Sell and Terry L. Morgan for those violations alleged in Plaintiffs' complaint to have been committed by Virginia Sell pursuant to the CWQCA and those claims that are barred by the claim preclusion doctrine of *res judicata*, or to seek recovery of assets distributed from Defendant Rico Development Corporation to Virginia Sell. In addition, the State covenants not to sue or take administrative action against the Settling Defendant or the heirs of Virginia Sell pursuant to

Sections 106, 107(a), and 113 of CERCLA, 42 U.S.C. §§ 9606, 9607(a) and 9613 with regard to the Site.

IX. RESERVATION OF RIGHTS

16. The United States and the State reserve, and this Consent Decree is without prejudice to, all rights against Settling Defendant and the Heirs with respect to all matters not expressly included within the United States' and the State's covenants not to sue in Section VIII (Covenant Not to Sue by Plaintiffs). Notwithstanding any other provision of this Consent Decree, the United States and the State reserve all rights against Settling Defendant and the Heirs with respect to:

- a. liability for failure of Settling Defendant to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability based upon the ownership or operation of the Site, or upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of Waste Materials at or in connection with the Site, after signature of this Consent Decree by the Settling Defendant; and
- e. liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

17. Notwithstanding any other provision of this Consent Decree, the United States and the State retain all authority and reserve all rights to take any and all response actions authorized by law.

X. COVENANT NOT TO SUE BY SETTling DEFENDANT

18. Settling Defendant and the Heirs covenant not to sue and agree not to assert any claims or causes of action against the United States or the State, or their contractors or employees, with respect to the Site or this Consent Decree, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

19. Except as provided in Paragraph 21 (Waiver of Claims) and Paragraph 25 (Waiver of Claim-Splitting Defenses), the covenants not to sue in Paragraphs 18 (a) - (c) shall not apply in the event that the United States or the State brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 16 (c) - (f), but only to the extent that the claims of

Settling Defendant and the Heirs arise from the same relief that the United States or the State is seeking pursuant to the applicable reservation.

20. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

21. Settling Defendant agrees not to assert any CERCLA claims or causes of action that the Estate of Virginia Sell may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against Settling Defendant.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

22. Except as provided in Paragraph 21, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Consent Decree may have under applicable law. Except as provided in Paragraph 21, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

23. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendant and the Heirs, but only in the capacity that the Heirs have been named as such

in the last will and testament of Virginia Sell or have otherwise made or received distributions of assets from the estate of Virginia Sell, are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The "matters addressed" in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendant or the Heirs coming within the scope of such reservations.

24. Settling Defendant agrees that with respect to any suit or claim for contribution brought by him for matters related to this Consent Decree, he will notify the United States and the State in writing no later than 60 days prior to the initiation of such suit or claim. Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against him for matters related to this Consent Decree, he will notify the United States and the State in writing within 15 days of service of the complaint or claim on him. In addition, Settling Defendant shall notify the United States and the State within 15 days of service or receipt of any Motion for Summary Judgment and within 15 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

25. In any subsequent administrative or judicial proceeding initiated by the United States or the State for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendant shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States or the State in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiffs set forth in Section VIII (Covenant Not to Sue by Plaintiffs).

XII. ACCESS

26. Commencing on the date of lodging of this Consent Decree, Settling Defendant agrees that the United States and the State, and their representatives, including EPA and CDPHE and their officers, employees, agents, contractors, and other representatives, and any person that has entered into an agreement with EPA regarding the conduct of response activities at the Site or such other property located adjacent to or near the Site, may have access at all reasonable times to the Site for the purpose of conducting any response activity related to the Site.

27. Notwithstanding any provision of this Consent Decree, the United States and the State retain all of their access authorities and rights, as well as all of their rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XIII. ACCESS TO INFORMATION

28. Within 60 days after the date of entry of this Consent Decree, Settling Defendant and the Heirs, upon request of the United States or the State, shall make available for review all documents and information within their possession or control or that of their agents relating to the Site. The requirement specified above shall continue for a period of 10 years such that if additional documents or information relating to the Site come into the possession or control of Settling Defendant or the Heirs or that of their agents, copies of such documents or other information shall be provided to EPA and the State within 60 days of their discovery by Settling Defendant or the Heirs.

29. **Business Confidential and Privileged Documents.**

a. Settling Defendant and the Heirs may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiffs under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA and the State, or if EPA has notified Settling Defendant that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Settling Defendant.

b. Settling Defendant and the Heirs may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendant or the Heirs assert such a privilege in lieu of providing documents, he or she shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendant or the Heirs. However, no documents, or other information created or generated pursuant to the requirements of this Consent Decree shall be withheld on the grounds that they are privileged.

30. Settling Defendant and the Heirs hereby certify that, to the best of their knowledge and belief, after thorough inquiry, they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports or other information relating to the Settling Defendant's potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of the initial complaint in this action and that Virginia Sell and the Personal Representative have fully complied with any and all requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. 9604(e) and 9622(e), Section 308 of the Clean Water Act, 33 U.S.C. § 1318, and the Federal Rules of Civil Procedure.

XIV. NOTICES AND SUBMISSIONS

31. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, the State, and Settling Defendant, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-5-1-1-06498

As to EPA:

Sheldon H. Muller (8ENF-L)
Enforcement Attorney
Office of Enforcement, Compliance and
Environmental Justice
United States Environmental Protection Agency, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

and

Carol Pokorny (8ENF-T)
Office of Enforcement, Compliance and
Environmental Justice
United States Environmental Protection Agency, Region 8
999 18th Street, Suite 300
Denver, CO 80202-2466

As to the State:

First Assistant Attorney General
Environmental Quality Unit
Natural Resources and Environment Section
Colorado Attorney General's Office
1525 Sherman Street, 5th Floor
Denver, CO 80203

As to the Settling Defendant:

David Sell
12122 West Atlantic Drive
Lakewood, CO 80228

XV. RETENTION OF JURISDICTION

32. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVI. INTEGRATION

33. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

34. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

35. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVIII. SIGNATORIES/SERVICE

36. Each undersigned representative of the Settling Defendant to this Consent Decree, the Deputy Chief of the Environmental Enforcement Section of the United States Department of Justice, and the Director of Legal and Regulatory Affairs for the Colorado Department of Public Health and Environment certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document. Settling Defendant further certifies that he is authorized by the Heirs to enter into the terms and conditions of this Consent Decree on their behalf and to execute and legally bind them to this document.

37. Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendant in writing that it no longer supports entry of the Consent Decree.

38. Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on his behalf with respect to all matters arising under or relating to this Consent Decree. Should Settling Defendant change the designation of his agent subsequent to the lodging of this Consent Decree, he shall notify EPA and the State in writing of this change and provide the name and address of the substituted agent. Settling Defendant hereby agrees to accept service in that manner and to waive

the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons.

XIX. COUNTERPARTS

39. This Consent Decree may be signed in counterparts.

XX. FINAL JUDGMENT

40. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States, the State and the Settling Defendant. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS _____ DAY OF _____, 200__.

United States District Judge

THE UNDERSIGNED PARTIES enters into this Consent Decree in the matter of United States v. Rico Development Corporation et al., Civil Action No. 99-MK-1386 (OES).

FOR THE UNITED STATES OF AMERICA

Date: 5.22.03

Tom Sansonetti
THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20044-7611

Date: May 27, 2003

Sheldon H. Muller
SHELDON H. MULLER
Special DOJ Attorney
U.S. Environmental Protection Agency
999 18th Street, Suite 300
Denver, CO 80202-2466
Telephone: (303) 312-6916
FAX: (303) 312-6953

THE UNDERSIGNED PARTIES enters into this Consent Decree in the matter of United States v. Rico Development Corporation et al., Civil Action No. 99-MK-1386 (OES).

Date: 5/1/03



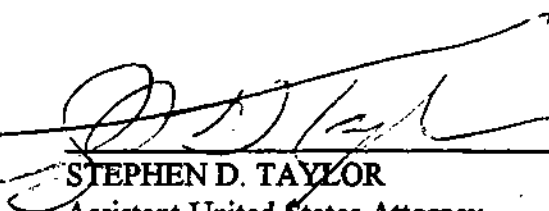
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Office of Enforcement, Compliance
and Environmental Justice

U.S. Environmental Protection Agency, Region 8
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Denver, CO 80202-2466
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United States Attorney
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Date: 5/8/03



STEPHEN D. TAYLOR

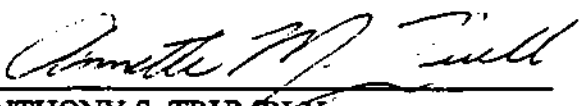
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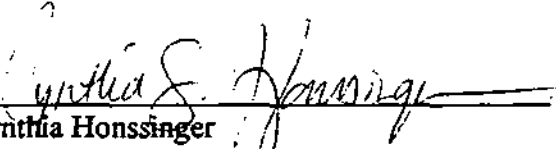
FOR THE STATE OF COLORADO

KEN SALAZAR
Attorney General

Date: May 15, 2003


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THE UNDERSIGNED PARTIES enters into this Consent Decree in the matter of United States v. Rico Development Corporation et al., Civil Action No. 99-MK-1386 (OES).

FOR GARY M. SELL, PERSONAL REPRESENTATIVE OF THE ESTATE OF VIRGINIA SELL, AND ON BEHALF OF THE HEIRS

Date: 3-7-03

Gary M. Sell
GARY M. SELL
Personal Representative of the Estate of Virginia
Sell, and on Behalf of the Heirs

Telephone:

Date: 3/27/03

Kevin M. Ward
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*As Attorney for Gary M.
Sell, P.R. of Estate of
Virginia Sell*

Agent Authorized to Accept Service on Behalf of Gary M. Sell, Personal Representative of the Estate of Virginia Sell [Please Print]:

Name: David Sell

Title: Brother of Gary Sell

Address: 12122 West Atlantic Drive

Lakewood, Colorado 80228